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**Caplin & Drysdale**  
ATTORNEYS

Caplin & Drysdale, Chartered  
One Thomas Circle, NW, Suite 1100  
Washington, DC 20005  
202-862-6000 202-429-3301 Fax  
www.caplindrysdale.com

December 15, 2008

Thomasenia P. Duncan  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: Governor Sarah Palin's Response in MUR 6105**

Dear Ms. Duncan:

Please find enclosed an original and two copies of Governor Sarah Palin's response to the October 23, 2008 complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW") in Matter Under Review 6105.

Should you have any questions concerning this response, please feel free to contact me.

Sincerely,

  
Trevor Potter

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**RESPONSE OF GOVERNOR SARAH PALIN TO THE COMPLAINT BY CITIZENS  
FOR RESPONSIBILITY AND ETHICS IN WASHINGTON ("CREW")  
IN MATTER UNDER REVIEW 6105**

**INTRODUCTION**

Apparently in hopes of adding to the pre-election media frenzy surrounding this year's presidential election, CREW filed a complaint with the Federal Election Commission ("Commission") claiming that the Republican National Committee's ("RNC") purchase of campaign apparel during the 2008 general election caused Governor Sarah Palin to violate federal campaign finance law. The complaint produced the publicity that CREW desired but has no legal basis. Governor Palin did not violate federal law because the RNC's purchase of campaign apparel did not convert any candidate's campaign funds to "personal use" under 2 U.S.C. § 439a and 11 C.F.R. § 113.2, making the purchase entirely permissible. The Commission should therefore find no reason to believe that a violation occurred and should dismiss this Matter.

**STATEMENT OF FACTS**

Sarah Palin is the Governor of the State of Alaska. She was selected on September 4, 2008 as the Republican Party's vice-presidential nominee for the 2008 general election, and during the time in question was a candidate for that office.

During the 2008 general-election period, the Republican National Committee ("RNC"), a national party committee under 11 C.F.R. § 100.13, purchased campaign apparel with RNC funds. These items were provided to Governor Palin and her family for campaign-related use during the term of Governor Palin's vice-presidential candidacy. They were promptly returned to the RNC after the 2008 general election. Because these items were for campaign use, the RNC counted the purchases against its \$19.1 million limit on coordinated party expenditures related to the McCain-Palin Campaign. The RNC properly reported these purchases as coordinated party expenditures in its disclosure reports filed with the Commission.

On October 23, 2008, CREW filed a complaint with the Commission that generated this Matter.

**ARGUMENT**

Governor Palin did not violate federal law because the RNC's purchase of campaign apparel did not convert any candidate's campaign funds to "personal use." The Federal Election Campaign Act of 1971, as amended ("FECA") states that a "contribution or donation . . . shall not be converted by any person to personal use."<sup>1</sup> "Personal use" is specifically defined under Commission regulations as:

<sup>1</sup> 2 U.S.C. § 439a(b)(1). See also 11 C.F.R. § 113.2(e).

[A]ny use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.<sup>2</sup>

The RNC's purchase of campaign apparel was thus well outside of this "personal use" prohibition's scope because (1) the funds used were not "in a campaign account of a present or former candidate" and (2) the need to purchase campaign apparel for temporary use by Governor Palin and her family during the campaign did not exist "irrespective" of Governor Palin's vice-presidential candidacy. CREW's allegation that Governor Palin violated federal law by using the RNC's campaign apparel is therefore baseless.

**1. Candidate Campaign Funds Were Not Converted to "Personal Use" Because the RNC Did Not Use Funds "In a Campaign Account of a Present or Former Candidate" to Purchase Campaign Apparel**

CREW wrongly asserts that the "personal use" prohibition applies to the RNC's party-committee funds. FECA states that the prohibition only affects the use of "contribution[s] accepted by a candidate and any other donation[s] received by an individual as support for activities of the individual as a holder of Federal office."<sup>3</sup> As mentioned, Commission regulations further clarify that only the use of funds "in a campaign account of a present or former candidate" can violate the "personal use" ban.<sup>4</sup> In fact, the Commission promulgated a wholly separate provision to govern payments "by any person other than [a] candidate or [a] campaign committee."<sup>5</sup> Under the provision, payments from non-candidate sources are limited, not banned outright.<sup>6</sup> The law's text and structure thus makes it apparent that the "personal use" prohibition does not apply to non-candidate sources such as party-committee funds.

The RNC did not draw upon any funds "in a campaign account of a present or former candidate" to purchase campaign apparel. As was shown by disclosure reports filed with the Commission, the RNC used only its own funds. The RNC appropriately counted its campaign-apparel purchases against its coordinated party expenditure limit, but this did not transform the RNC's funds into monies that were "in a campaign account of a . . . candidate." The Commission's coordinated party expenditure regulations merely allowed the RNC to incur up to

<sup>2</sup> 11 C.F.R. § 113.1(g) (emphasis added).

<sup>3</sup> 2 U.S.C. § 439a(a). See also 2 U.S.C. § 439a(b) ("A contribution or donation described in subsection (a) shall not be converted by any person to personal use."). The key phrase "described in subsection (a)" was omitted from CREW's complaint.

<sup>4</sup> See also Fed. Election Comm'n, Advisory Opinion 1991-21 (1991), available at <http://www.nictusa.com/ao/docs/1991-21.pdf> (stating that statutory and regulatory prohibitions on "personal use" do not apply to a non-candidate committee's disbursements).

<sup>5</sup> 11 C.F.R. § 113.1(g)(6)

<sup>6</sup> Fed. Election Comm'n, *Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds*, 60 Fed. Reg. 7861, 7871 (Feb. 9, 1995) ("Section 113.1(g)(6) sets out Commission policy on payments for personal use expenses by persons other than the candidate or the candidate's committee. Generally, payments of expenses that would be personal use if made by the candidate or the candidate's committee will be considered contributions to the candidate if made by a third party. Consequently, the amount donated or expended will count towards the person's contribution limits.").

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\$19.1 million of expenses “in connection with” the McCain-Palin Campaign and explained the circumstances that required the RNC to count its spending against the limit.<sup>7</sup> No provision ceded ownership or control of RNC funds to Governor Palin or to the McCain-Palin Campaign. To the contrary, only the RNC was authorized to “make” coordinated party expenditures during the 2008 general-election period.<sup>8</sup> In other words, the fact that the RNC’s campaign-apparel purchases counted against its \$19.1 million coordinated party expenditure limit does not change the ultimate reality that the RNC used its own funds rather than convert monies “in a campaign account of a present or former candidate.” Because the RNC’s campaign-apparel purchases constituted payments “by any person other than [a] candidate or [a] campaign committee” they were amount-limited and treated as in-kind expenditures.<sup>9</sup> In the context of the RNC making expenditures related to its vice-presidential nominee’s general-election campaign, the RNC was required to count its campaign-apparel purchases against its coordinated party expenditure limit. Since the total amount expended for campaign apparel was far less than the \$19.1 million in coordinated party expenditures allotted to the RNC, the RNC’s purchases were permissible. Governor Palin therefore did not violate federal law by using the RNC’s campaign apparel during the 2008 general-election period.

**2. Candidate Campaign Funds Were Not Converted to “Personal Use” Because the RNC’s Need to Purchase Campaign Apparel Did Not Exist “Irrespective” of Governor Palin’s Campaign**

The RNC’s funds were also not converted to “personal use” because the requirement for such clothing did not exist “irrespective” of Governor Palin’s vice-presidential candidacy. As noted, the “personal use” prohibition only applies to expenses “that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”<sup>10</sup> To give clear guidance to the regulated community, a 1995 Commission rulemaking produced a list of examples of these so-called “irrespective” expenses.<sup>11</sup> “Clothing” is one of the listed expenses.<sup>12</sup> The Commission listed clothing expenses primarily because of its concern about candidates deriving personal benefit from campaign-purchased attire.<sup>13</sup> Conversely, the Commission expressly excluded from the list all clothing “items of de minimis value that are used in the campaign”—apparel that offers a candidate little independent personal benefit during and after a campaign.<sup>14</sup>

CREW erroneously treats the inclusion of clothing on the Commission’s “irrespective” expense list as if it is conclusive evidence that the RNC’s campaign-apparel purchase was made

<sup>7</sup> See, e.g., 11 C.F.R. §§ 109.20, 109.32, 109.37.

<sup>8</sup> 2 U.S.C. § 441a(d)(1); 11 C.F.R. § 109.32(a).

<sup>9</sup> 11 C.F.R. § 113.1(g)(6).

<sup>10</sup> 11 C.F.R. § 113.2(e). See also 2 U.S.C. § 439a.

<sup>11</sup> Fed. Election Comm’n, *Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds*, 60 Fed. Reg. 7861, 7864 (Feb. 9, 1995) (explaining that the need for providing the example list is to guide the regulated community).

<sup>12</sup> 11 C.F.R. § 113.1(g)(1)(i)(C).

<sup>13</sup> Fed. Election Comm’n, *Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds*, 60 Fed. Reg. 7861, 7871 (Feb. 9, 1995) (noting that the regulation supersedes a previous Commission advisory opinion that permitted the use of a candidate’s campaign funds to purchase “specialized attire” that would be worn at events held for both “social and official business.”). See also Fed. Election Com’n Adv. Op. 1985-22.

<sup>14</sup> 11 C.F.R. § 113.1(g)(1)(i)(C).

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**"irrespective" of Governor Palin's campaign. Such blind application of the regulation's text is inappropriate here. The Commission did indeed list "irrespective" expense examples to clearly and prospectively identify the types of expenses that give candidates personal benefit. But the list should still be interpreted and applied in light of its underlying purpose: to prevent candidates from getting personal gain.<sup>15</sup> The Commission intended that the "personal use" prohibition apply to clothing possessed by candidates and used by them for personal and social purposes, as well as campaign events.**

**CREW asks the Commission to ignore the fact that Governor Palin received no personal benefit from using the RNC's campaign apparel. During the two-month general-election period, Governor Palin used the RNC's campaign apparel to perform her around-the-clock duties as the Republican Party's vice-presidential nominee. After Election Day, the campaign apparel was promptly returned to the RNC. The apparel remained the property of the RNC at all times /and solely served a campaign purpose during use. This situation did not raise the concerns that prompted the Commission to list clothing as an "irrespective" expense example. The RNC's campaign apparel was, instead, similar to an "item[ ] of de minimis value . . . used in the campaign" because Governor Palin derived no personal benefit from the apparel during or after the 2008 general election. Like an "item[ ] of de minimis value . . . used in the campaign," the RNC's purchase of campaign apparel was not an expense "that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." Therefore, the RNC did not unlawfully convert any candidate's campaign funds to "personal use" and Governor Palin did not violate federal law.**

### **CONCLUSION**

**Governor Palin did not violate federal law by using the RNC's campaign apparel during the 2008 general-election period because the RNC's purchase of campaign apparel did not convert any candidate's campaign funds to "personal use." The Commission should therefore find no reason to believe that a violation occurred and should dismiss this Matter.**

**Respectfully Submitted,**

  
**Trevor Potter**

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<sup>15</sup> See, e.g., Fed. Election Comm'n, Advisory Opinion 1992-38 (1992), *available at* <http://saos.nictusa.com/aodocs/1992-38.pdf> (permitting a loan from a general-election legal and accounting compliance fund to a general-election campaign committee because it "comports with the underlying principle of the [public financing] regulations").